

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1977

Supreme Court, U.S.  
FILED

MAY 30 1978

MICHAEL RODAK, JR., CLERK

No. 77-891

FRANK S. BEAL, Secretary of Welfare  
of the Commonwealth of Pennsylvania  
Et Al.

Appellants

vs.

JOHN FRANKLIN, M.D., Et Al.

Appellees

On Appeal From the United States District Court  
For the Eastern District of Pennsylvania

MOTION FOR APPOINTMENT OF ALAN ERNEST  
AS GUARDIAN AD LITEM FOR UNBORN CHILDREN

Alan Ernest  
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Counsel

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The Court is moved to appoint Alan Ernest as  
Guardian ad litem for unborn children in Pennsyl-  
vania. There is no counsel to represent the unborn  
children, yet it is there right to live that is at  
issue. Furthermore, the Guardian will defend the  
constitutional right to life of unborn children, as  
outlined below, which neither of the parties will  
do.

INTEREST OF GUARDIAN

Alan Ernest is a lawyer in the District of Co-  
lumbia. His interest is to protect the constitu-  
tional rights of unborn children.

## QUESTION PRESENTED BY GUARDIAN

For the eleventh time, the Supreme Court is petitioned to overrule its abortion decision, *Roe v. Wade*, 410 US 113(1973), on the grounds that it is based on false evidence and millions of lives have been unconstitutionally exterminated. See THE CASE AGAINST THE SUPREME COURT, at 5-6, infra.

## OUTLINE OF CONSTITUTIONAL ISSUES PRESENTED BY THE GUARDIAN

The Guardian's case was well presented in the ninth petition to overrule *Roe v Wade* (David Gaetano v Earl Silbert, United States Attorney for the District of Columbia, No. 77-1406, Cert. denied May 1, 1978):

"An EXHIBIT A established that *Roe v Wade* was based on false evidence by showing that (See EXHIBIT A, page 1, "Summary of Evidence"):

"1. even the Supreme Court admitted in *Roe v Wade* that if the unborn were a ' "person" within the language and meaning of the Fourteenth Amendment' then the case for abortion on demand 'of course, collapses, for the fetus' right to life is then guaranteed specifically by the Amendment,' and

"2. the express, universal terms of the Fourteenth Amendment ('nor shall any State deprive any person of life . . . without due process of law') (emphasis added) on their face, protect the lives of the unborn, as everyone else, and

"3. the holdings of Chief Justice John Marshall (that can be traced through the Constitution, The Federalist Papers, and the Federal Convention of 1787) show that the Supreme Court has no lawful power to construe exceptions to express, universal terms (such as 'any person') unless the Court can

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prove the exception to the express, universal terms beyond a reasonable doubt, and show that 'had this particular case been suggested' to the framers, the 'language would have been so varied, as to exclude it,' and

"4. the Supreme Court presented false evidence to support its conclusion in *Roe v Wade* that 'the word "person," as used in the Fourteenth Amendment, does not include the unborn' and but for the false evidence, there is not even a credible foundation, much less a compelling one, for denying the protection of the express, universal terms 'any person' to the lives of the unborn, and

"5. the truthful history corroborates that the express, universal terms 'any person' include the unborn, as they do all categories of persons, and more certainly than many groups. The Supreme Court included corporations and aliens as a 'person' within the language and meaning of the Fourteenth Amendment merely on the strength of the express, universal terms 'any person,' without any independent corroborating evidence whatsoever. (The unborn being the only persons ever excluded from the terms 'any person')

"In short, EXHIBIT A shows that the Supreme Court exactly violated the very letter of the Constitution, as well as its spirit, and condemned millions of victims to death whom the Constitution endeavours to preserve."

....

"*Roe v Wade* asserts a second method . . . for the government to condemn persons to death:

"The First, set out in the Constitution, is by conviction by an impartial jury for violation of express laws enacted by the people and applicable to all in the state; with right to representation by counsel; with right to be acquitted unless found guilty beyond a reasonable doubt; with provision to stop execution if new evidence is discovered.

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"The Second, set out in Roe v Wade, is for a Tribunal holding office for life (without assistance of counsel to defend the victims) to rule the victims out of the human race as inferiors, in violation of the very letter and spirit of the Constitution, falsifying evidence to make the homicides appear legal, and year after year to repeatedly deny applications showing the exterminations to be illegal.

....

"(I)n 1975, the Supreme Court of Germany held that the clause in the German Constitution, "Everybody has the right to life," also "includes unborn human beings," that "Abortion is an act of homicide," and the state has a "duty" under the Constitution "to protect unborn life." See translation, 63 California Law Review at 1342, 1348-49. . . . (I)t is of paramount importance to examine how it is possible for the high courts of two major nations, construing constitutional phrases that are in substance identical, to reach diametrically opposing conclusions about the legality of millions of pre-meditated homicides. That examination, presented in EXHIBIT A, surely permits reasonable people to conclude beyond a reasonable doubt that the Supreme Court closed its eyes on the Constitution and condemned to death those victims whom the Constitution endeavours to preserve; and there appears to be no defense that will not amount to a claim that the Supreme Court is above the law, - as Hitler was to Germany, so the Court is to America.

"If it be true, as Chief Justice Marshall once held (see Marbury v Madison, 1 Cranch 137, 163, 176, 178) that "government of laws, and not of men," founded in a "written constitution" deriving its just power from the "supreme" "authority" of "the people" is "the greatest improvement on political institutions," then the overthrow of that government of laws by lawless federal judges may be the most heinous crime in the history of government.

....

"APPENDIX  
"THE CASE AGAINST THE SUPREME COURT

"The evidence appears to support the charge that some Justices of the U.S. Supreme Court have violated federal criminal statutes, such as:

"18 USC 242, Deprivation of rights under color of law, - It is a crime for government officials, acting under pretense of law, to willfully deprive persons of their rights secured by the U.S. Constitution. The documentation in EXHIBIT A, at the very least, permits reasonable people to conclude beyond a reasonable doubt that the unborn are persons whose lives are protected by the U.S. Constitution. The evidence that Justices specifically authorized killings throughout the United States, by a willfully false construction of the Constitution, would certainly permit a jury to conclude beyond a reasonable doubt that Justices, acting under pretense of law, had deprived millions of unborn persons of their right to life protected by the U.S. Constitution.

"22 D.C. Code 201, D.C. abortion statute, - The felony abortion statute only permits abortions in the District of Columbia to preserve the mother's life or health. The evidence that Justices specifically authorized non-therapeutic abortions in violation of the positive criminal statute, by a willfully false construction of the Constitution, would surely permit a jury to find beyond a reasonable doubt that Justices had aided and abetted those killings.

"22 D.C. Code 105 a, Conspiracy, - When Roe v Wade was decided, non-therapeutic abortions were illegal, not just in the District of Columbia, but generally throughout the United States. The evidence that Justices specifically authorized non-therapeutic abortions in violation of the States' positive criminal statutes, by a willfully false construction of the Constitution, would appear to permit a jury to find beyond a reasonable doubt that Justices conspired to effect those killings.

"18 USC 1503, Obstruction of justice, - It is a

crime to endeavor to obstruct or impede the due enforcement of the law of the land, even by conduct that is otherwise legal, if the motive is corrupt or dishonest. The evidence that the Supreme Court has been petitioned year after year to overrule Roe v Wade on the grounds that it is based on false evidence and millions of lives have been illegally exterminated, and year after year the Supreme Court summarily refused to even listen, would appear sufficient to permit a jury to conclude beyond a reasonable doubt that Justices had dishonestly endeavored to obstruct or impede the due enforcement of the law of the land.

"18 USC 1001, False statements,- The evidence that some Justices, within their official jurisdiction, made or adopted false statements in Roe v Wade, and repeated petitions indicated the false statements to be willful and knowing, might be sufficient to permit a jury to conclude beyond a reasonable doubt that some Justices had made false statements within 18 USC 1001.

"18 USC 371, Conspiracy,- It is not only a crime to conspire to commit any criminal offense, but also to conspire to defraud the United States by misrepresentation or the overreaching of those charged with the carrying out of the governmental intention. The evidence already mentioned would appear sufficient to permit a jury to find beyond a reasonable doubt that Justices had not only conspired to commit the above mentioned crimes, but also to defraud the United States.

"18 USC 1621, Perjury,- An oath of office to uphold the Constitution would probably not, under ordinary circumstances, support a charge of perjury. However, Chief Justice John Marshall held that for "judges" to "swear" to discharge their duties "agreeably to the constitution" and then "close their eyes on the constitution" and "condemn to death those victims whom the constitution endeavours to preserve" is worse than "solemn mockery," it is a "crime." *Marbury v Madison*, 1 Cranch at 179-180.

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1977

DAVID GAETANO and ALAN ERNEST, )  
Next Friend of Unborn Child Roe )  
and All Others Similarly Situated,) )  
PETITIONERS )  
vs. ) No. 77-1406 )  
EARL J. SILBERT, )  
United States Attorney for the )  
District of Columbia, RESPONDENT )

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the Court.

Wade H. McCree, JR.  
Solicitor General

APRIL 6, 1978

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SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, D.C. 20543

May 1, 1978  
Alan Edward Ernest, Esq.  
5713 Harwich Ct.  
#232  
Alexandria, VA 22311

RE: David Gaetano, et al.  
v. Earl J. Silbert, etc.  
No. 77-1406

Dear Sir:

The Court today denied the petition for a writ of certiorari in the above-entitled case.

Very truly yours,  
MICHAEL RODAK, JR., Clerk  
By  
/s/ Edward Faircloth  
Assistant Clerk

And silence, in the face of a charge, can be taken as an admission that the charge is true. See McCormick on Evidence 651-54(2d ed 1972).

#### CONCLUSION

The Court is moved to appoint Alan Ernest as a guardian ad litem so that the unborn will have a lawyer to defend their constitutional rights.

In the alternative, the Court is moved to let Alan Ernest intervene as a next friend of the unborn children in Pennsylvania.

It can not be pretended that it is any longer the government of the United States,-any government of Constitution and laws,- if these unborn children are to be denied representation of counsel to defend their constitutional right to life.

Alan Ernest  
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Counsel